

# FLORIDA TOMATO EXCHANGE

*"A Nonprofit Agricultural Cooperative Association"*

February 25, 2004

Mr. David Priester  
Fresh Products Branch  
Room 1661-S  
AMS  
Stop 0240  
U.S. Department of Agriculture  
1400 Independence Avenue, S.W.  
Washington, D.C. 20250-0240

Re: U.S. Standards for Grades of Greenhouse Tomatoes

Dear Mr. Priester:

The Florida Tomato Exchange supports the position taken in the comments submitted by the California Fresh Tomato Growers Exchange. They recommend that the U.S. Standards for Grades of Greenhouse Tomatoes be amended to include a definition of what is a greenhouse. Further, we support the adoption of the California definition of greenhouse grown tomatoes to mean tomatoes grown in a fixed steel structure using irrigation and climate control, in an artificial medium that substitutes for soil (Article 43, Section 78636(b)).

We believe a change in the Grade Standards that includes the adoption of a definition of a greenhouse is necessary to clarify a situation that has developed in, and we believe, is detrimental to, the U.S. tomato industry. Both Florida and California have witnessed the growth and impact of greenhouse tomatoes being grown in North America and sold in the United States. As noted in the California Tomato Growers Exchange's comments, we also have seen imported tomatoes being labeled and marked as greenhouse tomatoes when prices were favorable. And these same tomatoes were labeled as vine ripe or field-grown tomatoes when it was more profitable to do so. Such manipulation of U.S. Standards For Grades of Greenhouse Tomatoes is understandable but wrong in our opinion and should be addressed. The California definition is a satisfactory way to address this issue.

We have reviewed several definitions of the term "greenhouse". They are pretty well summarized in USDA's Economic Research Service's Review of Federal Laws and Regulations Affecting Agricultural Employers (Federal Insecticide, Fungicide and Rodenticide Act of 1947) which notes that "*Greenhouse* means "any operation engaged in the production of agricultural plants inside any structure or space that is enclosed with a nonporous covering and is of sufficient size to permit worker entry. Polyhouses, mushroom houses, rhubarb houses, and

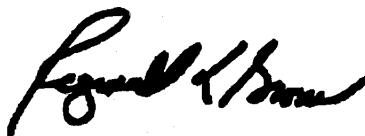
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similar structures are included, but not malls, atriums, conservatories, arboretums, or office buildings where agricultural plants are present primarily for aesthetic or climate modification.” (Copy of excerpt enclosed).

We think the California definition is preferred of the two and addresses the need to differentiate tomatoes actually grown in legitimate greenhouses and those that are not but are identified and branded as greenhouse tomatoes.

We appreciate the opportunity to present comments to the Department on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Reginald L. Brown".

Reginald L. Brown  
Executive Vice President

cc: Board of Directors  
Florida Tomato Exchange

Enclosure

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## Federal Insecticide, Fungicide, and Rodenticide Act of 1947

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), enacted in 1947, and amended several times, sets an overall risk and benefit standard for pesticide registration, requiring that all pesticides perform their intended function, when used according to labeling instructions, without posing unreasonable risks to human health or the environment. The law requires that pesticides be registered with the U.S. Environmental Protection Agency (EPA) before they are sold or distributed in commerce. Pesticide registrants (companies that hold pesticide registrations) are responsible for providing all test data necessary to satisfy EPA's registration requirements. The Federal Environmental Pesticide Control Act of 1972 required the Administrator of the EPA to ensure that the labeling and classification of pesticides works to protect farmers, farmworkers, and other persons coming in contact with pesticides or pesticide residues. In response, EPA issued a worker protection standard in 1974 that dealt with pesticide-related occupational safety and health of workers performing hand labor operations in fields during and after application of pesticides. EPA, after determining the 1974 standard did not adequately protect workers and pesticide handlers, issued a new Worker Protection Standard (WPS) in 1992 (3).<sup>11</sup> The Worker Protection Standard and the Certification of Pesticide Applicators Standard (CAS) restrict workers' exposures to pesticides.

### How the Law Applies to Agricultural Employment

The WPS has a much broader application than the older standard and applies to most employers as illustrated below. Covered employers include:

- Owners or managers of farms, forests, nurseries, or greenhouses where pesticides are used in the production of agricultural plants.

- Operators who hire or contract for services of agricultural workers to do tasks related to the production of agricultural plants on a farm, forest, nursery, or greenhouse.
- Operators of businesses in which the operator or employees apply pesticides used for the production of agricultural plants on any farm, forest, nursery, or greenhouse.
- Operators of businesses in which the operator or employees perform tasks as a crop advisor on any farm, forest, nursery, or greenhouse (25).

The WPS potentially affects the 170,173 vegetable and melon farms, fruit and tree nut farms, and farms that produce greenhouse, nursery, and floriculture products. However, 45,840 other farms had orchards and harvested vegetables for sale in 1997 (14). Thus, WPS could affect as many as 216,018 farms or about 11 percent of all farms.

Under provisions of WPS, covered employers are required to: Reduce overall exposure to pesticides by prohibiting handlers from exposing workers during pesticide application, excluding workers from areas being treated and areas under a restricted entry interval, and notifying workers about treated areas. Some activities are allowed during restricted entry intervals if workers are properly trained and protected:

- Mitigate exposures by requiring decontamination supplies to be present and emergency assistance available.
- Inform workers about pesticide hazards by requiring safety training (workers and handlers), safety posters, access to labeling information, and access to specific information (listing of treated areas on the establishment).

The general duties of the WPS tell employers what they must do to meet the above general requirements. Under the general duties, an agricultural employer or a pesticide handler-employer is required to:

- Assure that each worker and handler subject to the standard receives the required protections.
- Assure that any pesticide subject to the standard be used in a manner consistent with the labeling of the

<sup>11</sup>The 1974 EPA standard contained four basic requirements: (1) workers are not to be sprayed with pesticides; (2) restricted entry intervals are specified for 12 pesticides, interim restricted entry intervals for certain pesticides, and general restricted entry intervals for all other pesticides prohibiting reentry into treated areas until sprays have dried, dusts have settled, and vapors have dispersed; (3) protective clothing is required for any worker entering a restricted area before the specific reentry period has expired; and (4) appropriate and timely warnings are required (9).



pesticide, including the requirements in the standard.

- Provide sufficient information and directions to each person who supervises any worker or handler to assure that each worker or handler receives the required protection. The information and directions must specify which persons are responsible for actions required to comply with the standard.
- Require each person who supervises any worker or handler to assure compliance by the worker or handler with the provisions of this standard and to assure that the worker or handler receives the required protection (3).

Also, agricultural and handler employers are prohibited from taking any retaliatory actions against workers attempting to comply with this standard, and from taking any action that prevents or discourages any worker or handler from complying or attempting to comply with the WPS.

Table 4 summarizes WPS's provisions and how they apply to agricultural employment.<sup>12</sup>

## Definitions

The definitions and explanations presented here are limited to key terms to show the range of coverage of WPS. Readers seeking more detailed information should contact their State agency that regulates pesticides or their regional EPA office and consult *Title 40 Code of Federal Regulations, Part 170*, and *Title 7 United States Code*.

*Agricultural employer* means any person who hires or contracts for the services of workers, for any type of compensation, to perform activities related to the production of agricultural plants, or any person who is an owner of or is responsible for the management or condition of an agricultural establishment that uses such workers (3).

*Agricultural emergency* means a sudden occurrence or set of circumstances that the agricultural employer could not have anticipated and over which the agricultural employer has no control, requiring entry into a treated area when no alternative practices would prevent or mitigate a substantial economic loss (a loss

in profitability greater than that which is expected based on the experience and fluctuations of crop yields in previous years). The State, tribal, or Federal agency having jurisdiction must declare the existence of circumstances that could cause an agricultural emergency on that agricultural establishment (3).

*Agricultural establishment* means any farm, forest, nursery, or greenhouse (3).

*Agricultural plant* means any plant grown or maintained for commercial, research, or other purposes. Included in this definition are food, feed and fiber plants, trees, turfgrass, flowers, shrubs, ornamentals, and seedlings (3).

*Chemigation* means "the application of pesticides through irrigation systems" (3).

*Commercial pesticide handling establishment* means "any establishment, other than an agricultural establishment, that: (1) employs any person, including a self-employed person, to apply on an agricultural establishment, pesticides used in the production of agricultural plants; or (2) employs any person, including a self-employed person, to perform on an agricultural establishment, tasks as a crop advisor" (3).

*Crop advisor* means "any person who is assessing pest numbers or damage, pesticide distribution, or status or requirements of agricultural plants. The term does not include any person who is performing hand labor tasks" (3).

*Early entry* means "entry by a worker into a treated area on the agricultural establishment after a pesticide application is complete, but before any restricted-entry interval for the pesticide has expired" (3).

*Farm* means "any operation, other than a nursery or forest, engaged in the outdoor production of agricultural plants" (3).

*Forest* means "any operation engaged in the outdoor production of any agricultural plant to produce wood fiber or timber products" (3).

*Greenhouse* means "any operation engaged in the production of agricultural plants inside any structure or space that is enclosed with a nonporous covering and is of sufficient size to permit worker entry. Polyhouses, mushroom houses, rhubarb houses, and similar structures are included, but not malls, atriums,

<sup>12</sup>For more details see (9).



conservatories, arboretums, or office buildings where agricultural plants are present primarily for aesthetic or climate modification" (3).

*Hand labor* "means any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with surfaces (such as plants, plant parts, or soil) that may contain pesticide residues. Most hand labor activities, other than operating, moving or repairing irrigation or watering equipment, or scouting, are included" (3).

*Handler* means any person who for any type of compensation: (1) mixes, loads, transfers, applies, disposes of, or transports open containers of pesticides; (2) acts as a flagger; (3) cleans, adjusts, or repairs the parts of mixing, loading, or application equipment that may contain pesticide residues; (4) must enter an area being treated with pesticides to assist in the application of pesticides; (5) must enter a greenhouse or other enclosed area after the application of a fumigant, smoke, mist, fog, or aerosol product to operate ventilation equipment or to monitor air levels before the exposure level listed in the labeling or one of the ventilation criteria has been met; (6) must enter a treated area to move chemigation equipment (used to apply pesticides with irrigation water) before a restricted entry interval has expired; or (7) must enter a treated area outdoors after application of any soil fumigant to adjust or remove soil covers such as tarpaulins. The term does not include any person who is only handling pesticide containers that have been emptied or cleaned according to pesticide labeling instructions or, in the absence of such instructions, have been subject to triple-rinsing or its equivalent (3).

*Handler employer* means "any person who is self-employed as a handler or who employs any handler, for any type of compensation" (3).

*Immediate family* includes "only spouse, children, stepchildren, foster children, parents, step parents, foster parents, brothers, and sisters" (3).

*Nursery* means "any operation engaged in the outdoor production of any agricultural plant to produce cut flowers and ferns or plants that will be used in their entirety in another location. Such plants include, but are not limited to: flowering and foliage plants or trees; tree seedlings; live Christmas trees; vegetable, fruit, and ornamental transplants; and turfgrass produced for sod" (3).

*Owner* means "any person who has a present possessory interest (fee, leasehold, rental, or other) in an agricultural establishment covered by this part, unless that person has both leased such agricultural establishment to another person and granted that same person the right and full authority to manage and govern the use of such agricultural establishment" (3).

*Pesticide* means "(1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant..." (24).

*Restricted entry interval* means "the time after the end of a pesticide application during which entry into the treated area is restricted" (3).

*Treated area* means any area to which a pesticide is being directed or has been directed (3).

*Worker* means any person, including a self-employed person, who is employed for any type of compensation to perform activities relating to the production of agricultural plants on a farm or in a greenhouse, nursery, or forest. These activities include hand harvest tasks (weeding, planting, cultivating, and harvesting) and other tasks in the production of agricultural plants (such as operating or moving irrigation equipment). While workers are performing pesticide handling activities, they are considered to be handlers subject to the requirements for handlers in the WPS (3 and 25).

### Exceptions and Exemptions

In addition to the above definitions, the terms "exceptions" and "exemptions" require explanation. Unless specifically stated in the WPS as an exception or an exemption, the standard covers all pesticide use on a farm, greenhouse, nursery, or forest that produces agricultural plants.

*Exceptions to WPS* are for pesticide application on agricultural establishments in the following circumstances:

- For mosquito abatement, Mediterranean fruit fly eradication, or similar wide-area public pest control programs sponsored by governmental entities.
- On livestock or other animals, or in or about animal premises.